IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 471 of 1998

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK LEYLAND FINANCE LIMITED

Versus

HARJITSING VACHANSING HUNDAL

Appearance:

1. Appeal from Order No. 471 of 1998

MR HR PRAJAPATI for Petitioner No. 1

MR BC DAVE for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 25/10/2001

ORAL JUDGEMENT

1. The appellant - original defendant has challenged in this Appeal the impugned order dated 10.7.1998 passed by the learned 4th Joint Civil Judge (SD), Nadiad, below

Ex.5 in Special Civil Suit No.35 of 1998, filed by the respondent - original plaintiff, whereby the learned trial Judge allowed the Application on condition that if the plaintiff pays Rs.60,000/- within a period of 30 days to the defendant then the possession of Truck No.GJ 7 X 5637 be handed over to the plaintiff. The plaintiff was also directed to submit Undertaking that he will go on paying the instalments regularly. If he fails to pay instalment then the defendant may obtain permission from the Court and thereafter only take further action.

2. Initially the Revision Petition No.1117 of 1998 was filed against the impugned order, but later on i.e. on22.9.1998 it was converted into Appeal from Order and accordingly this Appeal from order along with Civil Application No.9643 of 1998 was filed by the appellant original defendant for interim relief. The said Application was disposed of by the learned Single Judge of this Court by order dated 8.10.1998 and interim relief was granted in favour of the appellant in terms of Para : 5(D) and thereby the impugned order dated 10.7.1998 passed by the trial Court was stayed.

3. Thereafter Civil Application No.9764 of 1998 was filed by the respondent - original plaintiff for staying the implementation of the order dated 8.10.1998 passed by the learned Single Judge in Civil Application No.9643 of 1998. The said Civil Application No.9764 of 1998 was dismissed by the learned Single Judge on 9.10.1998. Thereafter Civil Application No.11625 of 1998 was filed by the respondent - original plaintiff for permitting him to withdraw the amount of Rs.60,000/- deposited by him before the trial Court. The said Application was granted by the learned Single Judge on 14.12.1998 and accordingly the amount of Rs.60,000/- was withdrawn by the plaintiff.

4. Thus, the Appeal is not required to be decided on merit when the conditional order passed by the trial Court has no more remained into existence in the sense that the respondent - original plaintiff has already withdrawn the amount of Rs.60,000/-.

5. Under the circumstances, without going into the legality and validity of the impugned order passed by the trial Court this Appeal is disposed of with direction to the learned trial Judge to decide the main Special Civil Suit No.35 of 1998 as early as possible and not later than 31.12.2002. Till then the interim relief granted earlier by this Court in Civil Application No.9643 of 1998 in favour of the appellant - original defendant shall continue. The parties shall fully cooperate with

the final disposal of the Suit.

sd/-

Date : October 25, 2001 (B.J.Shethna, J.)

sas